

STATE OF MICHIGAN
COURT OF APPEALS

TIMOTHY RUMFIELD, Personal Representative
of the ESTATE OF DANIEL RUMFIELD, and
Conservator/Co-Guardian of JEFFREY
RUMFIELD,

Plaintiff-Appellee,

v

MATTHEW HENNEY,

Defendant/Cross-Defendant,

and

BRIAN HENNEY,

Defendant,

and

KELLY FUELS, INC., d/b/a WOODLAND
EXPRESS MART,

Defendant/Cross-Plaintiff-Appellant.

Before: Davis, P.J., and Sawyer and Schuette, JJ.

SCHUETTE, J. (*concurring*).

I concur with my distinguished colleagues in reversing the trial court's judgment in favor of plaintiff. I write separately, however, to express my opinion that Henney's prior use of false identification to purchase alcohol at Woodland Express Mart satisfies the requirements MCL 436.1801(7). I would hold that the Dramshop Act does not require, either explicitly or implicitly, that licensees verify customers' identification with every purchase of alcoholic beverages. Therefore, the testimonies of clerks Randall and Moody should also be admitted as evidence of the Woodland Express Mart clerks' repeated assurance that Henney was of legal age to purchase alcohol. Such a ruling would be consistent with the Legislature's intent in drafting

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the Act, as interpreted by our Supreme Court in *Craig v Larson*, 432 Mich 346, 357; 439 NW2d 899 (1989):

However, the legislative history of the act reflects repeated efforts by the Legislature to narrow the liability of dramshop owners. The amendments of 1958, 1961, 1972, and 1986 have consistently limited, not expanded, dramshop liability. Given the Legislature's attempts over the past decades to carefully and deliberately delineate the scope of dramshop liability, accepting appellant's invitation to expand dramshop liability would be improvident and would risk disturbing the remedial balance the Legislature has attempted to achieve.

In this instance, the Legislature's intent can be most reasonably ascertained by the fact that it did not impose any procedural or time-specific requirements regarding licensees' examination of their patrons' identification, as long as the occurrence of the examination could be proved. As an example, if the Legislature intended more strict or specific requirements, it could have amended the Act to include them in a manner similar to that of our neighboring state, Ohio¹. Therefore, I conclude that it would be reasonable and proper to admit the clerks' testimony because it provides evidence that defendant satisfied the explicit and intended requirements of MCL 436.1801(7).

For the foregoing reasons, I concur with the majority in reversing for defendant, but would admit the testimony on alternate grounds.

/s/ Bill Schuette

¹ Ohio Rev Code Ann § 4301.639 provides an affirmative defense to defendant vendors if they accepted false identification *at the time of purchase*. See *State v Chumbley*, 128 Ohio App 3d 323; 714 NE2d 968 (1998).